

STATE OF NEW HAMPSHIRE

GRAFTON COUNTY, SS

SUPERIOR COURT

State of New Hampshire  
Department of Environmental Services

v.

Thermal Dynamics Corporation

Docket No. 08-E-073

**CONSENT DECREE**

**A. INTRODUCTION**

1. Petitioner, the State of New Hampshire Department of Environmental Services, by and through its counsel, the Attorney General (hereinafter "State"), and the Respondent, Thermal Dynamics Corporation, (hereinafter "TDC" or "Defendant"), represented by, McLane, Graf, Raulerson & Middleton, P.A., hereby agree to the terms and conditions set forth in this Consent Decree, as ordered by the Superior Court of Grafton County, in settlement of the alleged violations of the New Hampshire Hazardous Waste Management Act, RSA 147-A, asserted by the State in the Petition for Civil Penalties filed with the Court simultaneously with this Consent Decree. The State's Petition is attached as Exhibit A hereto.

2. This Consent Decree resolves the violations alleged in the State's Petition through the date of entry of the Decree; in particular, violations of RSA 147-A, and New Hampshire's hazardous waste rules and permits issued thereunder. The alleged violations relate to noncompliance with statutory and regulatory hazardous waste requirements. In

4/1/08  
Approved to Decree  
Timothy J. Vaughan

particular, the State alleges that TDC failed to properly manage hazardous waste at its facility located at 82 Benning Street, West Lebanon, NH, by failing to deliver hazardous waste to a facility authorized to handle such waste, failing to conduct adequate hazardous waste determinations, and failing to comply with various generator requirements such as storage, inspection and employee training requirements, among other things. The Petition seeks civil forfeiture fine in the amount of \$50,000 per day for each violation of the hazardous waste statutes, rules, and permits, as provided under RSA 147-A:17(2006).

3. TDC is required to comply with all federal and State hazardous waste management laws, rules, and permits, at its West Lebanon facility.
4. TDC does not admit, and nothing in this agreement or its performance constitutes or should be interpreted as an admission of any facts or legal allegations in the Petition. Nothing herein shall be construed as an admission of fact or liability by TDC. The State and TDC, wishing to avoid the expense of litigation, agree without adjudication of the facts or law, that settlement of this matter is in the public interest and that entry of this Decree without further litigation is an appropriate way to resolve any dispute, and the parties consent to entry of this Decree.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

#### **B. STATEMENT OF CLAIMS**

5. The Petition filed herein states claims upon which relief can be granted.

### **C. JURISDICTION AND VENUE**

6. This Court has jurisdiction over the parties and this action pursuant to RSA 147-A:4 (2006) and RSA 147-A:17 (2006). Venue is proper in this county because the facility in question is located in West Lebanon, New Hampshire. TDC waives service of process of the underlying Petition and acknowledges that it has received a copy thereof.

### **D. CIVIL PENALTIES AND SUPPLEMENTAL PROJECTS**

7. TDC agrees to a total civil penalty of two hundred eighty-one thousand five hundred dollars (\$281,500) in return for a complete release and full settlement of the violations alleged in the Petition relating to various environmental statutes, rules, and permits at the TDC facility through the date of entry of this Decree.

8. The civil penalty shall be satisfied through (a) a combination of cash payment in the amount of one hundred fifty seven thousand four hundred forty five dollars (\$157,445) to the State's Hazardous Waste Cleanup Fund and through (b) performance of certain Supplemental Environmental Projects (hereinafter "SEPs") valued at one hundred twenty four thousand and fifty five dollars (\$124,055) within the time frames and criteria set forth herein. No federal or State tax deductions may be taken with regard to the civil penalty.

9. TDC shall make a lump sum payment in the form of a certified check in the amount of one hundred fifty seven thousand four hundred forty five dollars (\$157,445) made payable to "Treasurer, State of New Hampshire – Hazardous Waste Cleanup Fund." The payment shall be delivered by hand or certified mail to the Attorney General's Office, Environmental Protection Bureau, 33 Capitol Street, Concord, NH 03301, Attn: Maureen D. Smith, Senior Assistant Attorney General, within thirty (30)

days of the effective date of this Decree. TDC shall pay interest on any late payment, which interest shall accrue at a rate of 10% per annum, per RSA 336:1.

10. In exchange for a credit of up to one hundred twenty four thousand fifty five dollars (\$124,055) towards any civil penalty that might have been imposed, TDC agrees to perform and to document the performance of certain SEPs, which the parties agree are intended to protect public health and the environment and which are beyond the requirements of existing law. TDC shall expend at least \$124,055 in capital equipment costs, exclusive of engineering, administrative and other associated costs, and shall provide documentation to the State as required under paragraph 11, regarding the SEPs described in paragraphs 10(a) through 10(c) herein TDC shall document the total expenditures made within nine (9) months of the effective date of this Decree. To the extent that TDC is unable to document that actual expenditures for capital equipment total at least \$124,055, TDC shall pay the difference between \$124,055 and actual expenditures. The payment shall be made within thirty (30) days of submission of the certification of completion required by paragraph 11 or such earlier time as TDC may elect and shall be made to the State under the procedure set forth in paragraph 9.

- a. TDC shall install or document the installation of twenty-four (24) coolant separators for equipment used to machine metals at the TDC facility. The separators will allow for the recycling of water-based coolant as a cutting fluid. These devices allow for a more efficient use of the coolant because the petroleum-based oil can be separated out, producing reusable coolant of higher quality and extending the time period between machine

cleanings. The estimated capital cost, exclusive of engineering, administrative and other associated costs is \$32,760.

- b. TDC shall purchase and install a Sanborn UTF1500 ultrafiltration system to retrofit the Ramco parts washer currently used at the facility. This ultrafiltration system will allow for continuous filtration of process water and will eliminate frequent process water replacement. The estimated capital cost, exclusive of engineering, administrative and other associated costs is \$52,250.
- c. TDC will purchase two (2) BioClean Control Modules. One will be retrofitted to the paint wash system to filter and re-use paint wash water and facility mop water. The second BioClean Control Module will be located in the machine shop so that all the parts washers can be plumbed in series for filtration and return of parts wash water. The BioClean System will allow for constant filtration of the waters, will eliminate the need to dispose of water from the facility processes, and will minimize the amount of fresh water required for each unit. The estimated capital costs associated with this project total \$39,045.

11. TDC shall submit to the State within 9 months of the effective date of this Decree a certification of completion by a corporate officer that the SEPs in paragraph 10.a-c have been installed and are operational and that at least \$124,055 in capital costs were incurred. TDC shall submit with the certification a verified statement of capital costs expended, accompanied by itemized system costs, documented by copies of purchase orders and receipts or cancelled checks.

12. TDC agrees that any public statements, oral or written, making reference to the SEPs shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the State of New Hampshire for alleged violations of the New Hampshire Hazardous Waste Management Act."

13. TDC hereby certifies that, as of the date of this Decree, TDC is not otherwise required by virtue of any local, state or federal statute, regulation, order, consent decree, permit or other law or agreement, to develop or implement any aspect of the SEPs required by this Decree.

14. TDC shall pay stipulated penalties in the amount of one hundred dollars (\$100) per day for noncompliance with the dates set forth in paragraphs 9 through 13 herein.

#### **E. Effect of Decree**

15. This Decree and all obligations assumed hereunder shall apply to and be binding upon Thermal Dynamics Corporation, and its successors and assigns.

16. The State of New Hampshire, by and through the Attorney General, releases and covenants not to sue or take any administrative action against TDC and its successors and assigns for the violations alleged in the Petition or for violations that might have been based on specific material facts alleged in the Petition, through the effective date of this Decree. The State expressly reserves the right to sue or to bring administrative actions against TDC and its successors and assigns with regard to claims or liability for violations not specifically alleged, or which could have been alleged based in the State's Petition. The State also reserves the right to bring an action to enforce the terms of this Decree.

17. The parties acknowledge that TDC, and its successors and assigns, have a continuing obligation to remain in compliance with all applicable federal and state laws, rules and permits relating to its facility. The State reserves the right to bring any administrative, civil, or criminal action for any hazardous waste, solid waste, or other environmental violation arising after the effective date of this Decree. This reservation of rights includes, but is not limited to, violations that occur in connection with carrying out the terms of this Decree, and TDC's performance of work referenced in this Decree. TDC reserves any and all defenses with regard to such State claims.

18. It is the intention of the parties that this Decree be entered and enforced pursuant to all the power of the Court at law and equity as an Order of the Court. Once the Decree is entered as an Order by the Court, TDC acknowledges that any violation of the Decree or the agreements reflected herein may be cause for TDC being adjudged in contempt of court and hereby waives any objection to jurisdiction if such remedy is sought by the State.

19. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon any further breach or default.

20. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing between TDC and the State, through the Attorney General's Office, and filed with the Court. Such modifications become effective when approved by the Court. The parties may agree in writing to non-material modifications without Court approval, such as modification to schedules established by

this Decree with no effect on statutory, regulatory, or permitted obligations. Such non-material modifications become effective upon execution by both parties.

21. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

22. This Decree shall be construed in accordance with the laws of the State of New Hampshire.

23. Each party shall bear its own costs and attorneys' fees.

24. This matter may be closed after ninety (90) days of the Court's approval of this Decree. The Court shall retain jurisdiction of this matter for purposes of enforcement of the Decree and shall reopen the case upon motion by either party for enforcement of its terms. The Decree shall terminate after TDC has made the requisite payments contemplated in paragraph 9 and completed the Supplemental Environmental Projects described in paragraph 10.

CONSENTED TO:

THE STATE OF NEW HAMPSHIRE

KELLY A. AYOTTE  
ATTORNEY GENERAL


By:

Maureen D. Smith 3/24/08

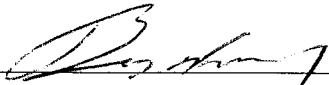
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THERMAL DYNAMICS CORPORATION,

By:  Mirle McCall Interim OC  
Duly Authorized

COUNSEL FOR DEFENDANT  
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MIDDLETON, P.A.

By: 

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The Court finds that this Consent Decree is a reasonable and fair settlement of the State's alleged violations and adequately protects the public interest.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SO ORDERED

Dated: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice